

STATE REVOLVING FUND LOAN PROGRAM
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF FINANCIAL ASSISTANCE

CONSTRUCTION CONTRACT REQUIREMENTS (CCR)
AND
BOILERPLATE (BP)

Revised August 5, 2005

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INSTRUCTIONS

This document contains federal and state requirements for projects funded under the State Revolving Fund (SRF) Loan Program. The *CONSTRUCTION CONTRACT REQUIREMENTS* (CCR) section calls attention to state laws that SRF applicants must follow. The *BOILERPLATE* (BP) includes requirements that construction contractors must meet.

Applicants for SRF Loans are required to complete the CCR Checklist (page CCR-8) and return it to the Division of Financial Assistance (Division) with the plans and specifications. The contents of the CCR and BP are to be included in the contract specifications. We recommend that the BP be inserted, unchanged and in its entirety, into the contract specifications. We will review the plans and specifications for conformity to the CCR Checklist and BP. Non-compliance with the provisions in the CCR and BP may impact loan eligibility and/or award of construction contract.

BOILERPLATE FORMS TO BE COMPLETED (in order of appearance):

- | | | |
|---|---|---------|
| 1 | Escrow agreement for security deposits in lieu of retention | (CCR-4) |
| 2 | Construction Contract Requirements Checklist | (CCR-8) |
| 3 | Form 3 | (BP-30) |
| 4 | Form 4 (see Note below) | (BP-31) |
| 5 | Certification of Nondiscrimination Clause | (BP-35) |
| 6 | Affirmative Action goals and timetables | (BP-39) |
| 7 | Certification of Non-Segregated Facilities | (BP-44) |
| 8 | Certification of Drug-Free Workplace | (BP-45) |
| 9 | Non-Collusion Affidavit (see Note below) | (BP-49) |

NOTE: **Form 4** and the *NOTARIZED Non-Collusion Affidavit* must be submitted with the bid. Without these documents, the bid shall be rejected as non-responsive.

The CCR and BP are available by accessing State Water Resources Control Board (SWRCB) Internet website <http://www.swrcb.ca.gov>. The Word 97 file "SRF Construction Contract Requirements and Boilerplate - Revised November 7, 2003" is available through the Financial Assistance link. The CCR and BP is available in other electronic formats. Contact Robert Been SWRCB, at (916) 341-5641 or email beenr@swrcb.ca.gov to obtain other formats. Also, Mr. Been is available to answer any questions pertaining to CCR and BP.

CONSTRUCTION CONTRACT REQUIREMENTS

1 - ELIMINATION OF SEGREGATED FACILITIES NOTICE TO APPLICANTS OF REQUIREMENT FOR CERTIFICATION OF NON-SEGREGATED FACILITIES

(a) A Certification of Non-Segregated Facilities, as required by the May 9, 1967 Order (32 F.R. 7439, May 19, 1967) on Elimination of Segregated Facilities, by the Secretary of Labor, must be submitted by the applicant prior to any agreement for Federal financial assistance where the applicant will himself perform a Federally-assisted construction contract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity Clause.

(b) Applicants for Federal assistance shall notify prospective Federally-assisted construction contractors of the Certification of Non-Segregated Facilities required by the May 9, 1967 Order on Elimination of Segregated Facilities by the Secretary of Labor.

2 - PUBLIC CONTRACT CODE SECTION 3300 IDENTIFICATION OF CONTRACTORS LICENSE CLASSIFICATION

(a) Any public entity, as defined in Section 1100, the University of California, and the California State University shall specify the classification of the contractor's license which a contractor shall possess at the time a contract is awarded. The specification shall be included in any plans prepared for a public project and in any notice inviting bids required pursuant to this code.

This requirement shall apply only with respect to contractors who contract directly with the public entity.

(b) A contractor who is not awarded a public contract because of the failure of an entity, as defined in subdivision (a), to comply with that subdivision shall not receive damages for the loss of the contract.

3 - PUBLIC CONTRACT CODE SECTION 3400 USE OF BRAND NAMES; "OR EQUAL" REQUIREMENT

(a) No agency of the state nor any political subdivision, municipal corporation, or district, nor any public officer or person charged with the letting of contracts for the construction, alteration, or repair of public works shall draft or cause to be drafted specifications for bids, in connection with the construction, alteration, or repair of public works, (1) in such a manner as to limit the bidding, directly or indirectly, to any one specific concern, or (2) calling for a designated material, product, thing, or service by specific brand or trade name unless the specification lists at least two brands or trade names of comparable quality or utility and is followed by the words "or equal" so that bidders may furnish any equal material, product, thing, or service. In applying this section, the specifying agency shall, if aware of an equal product manufactured in this state, name that product in the specification. In those cases involving a unique or novel product application required to be used in the public interest, or where only one brand or trade name is known to the specifying agency, it may list only one. Specifications shall provide a period of time prior to or after, or prior to and after, the award of the contract for submission of data substantiating a request for a substitution of "an equal" item. If no time period is specified, data may be submitted any time within 35 days after the award of the contract. (b) Subdivision (a) is not applicable if the awarding authority, or its designee, makes a finding that is described in the invitation for bids or request for proposals that a particular material, product, thing, or service is designated by specific brand or trade name for either of the following purposes: (1) In order that a field test or experiment may be made to determine the product's suitability for future use. (2) In order to match other products in use on a particular public improvement either completed or in the course of completion.

4 - PUBLIC CONTRACT CODE SECTION 4104
LISTING OF SUBCONTRACTORS

Any officer, department, board or commission taking bids for the construction of any public work or improvement shall provide in the specifications prepared for the work or improvement or in the general conditions under which bids will be received for the doing of the work incident to the public work or improvement that any person making a bid or offer to perform the work, shall, in his or her bid or offer, set forth:

(a) (1) The name and the location of the place of business of each subcontractor who will perform work or labor or render service to the prime contractor in or about the construction of the work or improvement, or a subcontractor licensed by the State of California who, under subcontract to the prime contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of 1 percent of the prime contractor's total bid or, in the case of bids or offers for the construction of streets or highways, including bridges, in excess of one-half of 1 percent of the prime contractor's total bid or ten thousand dollars (\$10,000), whichever is greater. (2) (A) Subject to subparagraph (B), any information requested by the officer, department, board, or commission concerning any subcontractor who the prime contractor is required to list under this subdivision, other than the subcontractor's name and location of business, may be submitted by the prime contractor up to 24 hours after the deadline established by the officer, department, board, or commission for receipt of bids by prime contractors. (B) A state or local agency may implement subparagraph (A) at its option.

(b) The portion of the work which will be done by each subcontractor under this act. The prime contractor shall list only one subcontractor for each portion as is defined by the prime contractor in his or her bid.

5 - PUBLIC CONTRACT CODE SECTION 7105
"ACTS OF GOD" INSURANCE EXCLUSION

7105. (a) Construction contracts of public agencies shall not require the contractor to be responsible for the cost of repairing or restoring damage to the work, which damage is determined to have been proximately caused by an act of God, in excess of 5 percent of the contracted amount, provided, that the work damaged is built in accordance with accepted and applicable building standards and the plans and specifications of the awarding authority. However, contracts may include provisions for terminating the contract. The requirements of this section shall not be mandatory as to construction contracts financed by revenue bonds. This section shall not prohibit a public agency from requiring that a contractor obtain insurance to indemnify the public agency for any damage to the work caused by an act of God if the insurance premium is a separate bid item. If insurance is required, requests for bids issued by public agencies shall set forth the amount of the work to be covered and the contract resulting from the requests for bids shall require that the contractor furnish evidence of satisfactory insurance coverage to the public agency prior to execution of the contract. (b) For the purposes of this section:

(1) "Public agency" shall include the state, the Regents of the University of California, a city, county, district, public authority, public agency, municipal utility, and any other political subdivision or public corporation of the state.

(2) "Acts of God" shall include only the following occurrences or conditions and effects: earthquakes in excess of a magnitude of 3.5 on the Richter Scale and tidal waves.

(c) Public agencies may make changes in construction contracts for public improvements in the course of construction to bring the completed improvements into compliance with environmental requirements or standards established by state and federal statutes and regulations enacted after the contract has been awarded or entered into. The contractor shall be paid for the changes in accordance with the provisions of the contract governing payment for changes in the work or, if no provisions are set forth in the contract, payment shall be as agreed to by the parties.

(d) (1) Where authority to contract is vested in any public agency, excluding the state, the authority shall include the power, by mutual consent of the contracting parties, to terminate, amend, or modify any contract within the scope of such authority. (2) Paragraph (1) shall not apply to contracts entered into pursuant to any statute expressly requiring that contracts be let or awarded on the basis of competitive bids. Contracts of public agencies, excluding the state, required to be let or awarded on the basis of competitive bids pursuant to any statute may be terminated,

amended, or modified only if the termination, amendment, or modification is so provided in the contract or is authorized under provision of law other than this subdivision. The compensation payable, if any, for amendments and modifications shall be determined as provided in the contract. The compensation payable, if any, in the event the contract is so terminated shall be determined as provided in the contract or applicable statutory provision providing for the termination.

(3) Contracts of public agencies may include provisions for termination for environmental considerations at the discretion of the public agencies.

6 - PUBLIC CONTRACT CODE SECTION 9203
USING PROGRESS PAYMENTS FOR ANY PROJECT OVER \$5,000

(a) Payment on any contract with a local agency for the creation, construction, alteration, repair, or improvement of any public structure, building, road, or other improvement, of any kind which will exceed in cost a total of five thousand dollars (\$5,000), shall be made as the legislative body prescribes upon estimates approved by the legislative body, but progress payments shall not be made in excess of 95 percent of the percentage of actual work completed plus a like percentage of the value of material delivered on the ground or stored subject to, or under the control of, the local agency, and unused. The local agency shall withhold not less than 5 percent of the contract price until final completion and acceptance of the project. However, at any time after 50 percent of the work has been completed, if the legislative body finds that satisfactory progress is being made, it may make any of the remaining progress payments in full for actual work completed.

(b) Notwithstanding the dollar limit specified in subdivision (a), a county water authority shall be subject to a twenty-five thousand dollar (\$25,000) limit for purposes of subdivision (a).

7 - PUBLIC CONTRACT CODE SECTION 22300
SECURITIES IN LIEU OR RETENTION PERMITTED AND ESCROW AGREEMENT

(a) Provisions shall be included in any invitation for bid and in any contract documents to permit the substitution of securities for any moneys withheld by a public agency to ensure performance under a contract, provided that substitution of securities provisions shall not be required in contracts in which there will be financing provided by the Farmers Home Administration of the United States Department of Agriculture pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. Sec. 1921 et seq.), and where federal regulations or policies, or both, do not allow the substitution of securities. At the request and expense of the contractor, securities equivalent to the amount withheld shall be deposited with the public agency, or with a state or federally chartered bank in this state as the escrow agent, who shall then pay those moneys to the contractor. Upon satisfactory completion of the contract, the securities shall be returned to the contractor.

(b) Alternatively, the contractor may request and the owner shall make payment of retentions earned directly to the escrow agent at the expense of the contractor. At the expense of the contractor, the contractor may direct the investment of the payments into securities and the contractor shall receive the interest earned on the investments upon the same terms provided for in this section for securities deposited by the contractor. Upon satisfactory completion of the contract, the contractor shall receive from the escrow agent all securities, interest, and payments received by the escrow agent from the owner, pursuant to the terms of this section.

(c) Securities eligible for investment under this section shall include those listed in Section 16430 of the Government Code, bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the contractor and the public agency. The contractor shall be the beneficial owner of any securities substituted for moneys withheld and shall receive any interest thereon. Failure to include these provisions in bid and contract documents shall void any provisions for performance retentions in a public agency contract. For purposes of this section, the term "public agency" shall include, but shall not be limited to, chartered cities.

(d) (1) Any contractor who elects to receive interest on moneys withheld in retention by a public agency shall, at the request of any subcontractor, make that option available to the subcontractor regarding any moneys withheld in retention by the contractor from the subcontractor. If the contractor elects to receive interest on any moneys withheld in retention by a public agency, then the subcontractor shall receive the identical rate of interest received by the contractor on any retention moneys withheld from the subcontractor by the contractor, less any actual pro rata costs associated with administering and calculating that interest. In the event that the interest rate is a

fluctuating rate, the rate for the subcontractor shall be determined by calculating the interest rate paid during the time that retentions were withheld from the subcontractor. If the contractor elects to substitute securities in lieu of retention, then, by mutual consent of the contractor and subcontractor, the subcontractor may substitute securities in exchange for the release of moneys held in retention by the contractor. (2) This subdivision shall apply only to those subcontractors performing more than five percent of the contractor's total bid. (3) No contractor shall require any subcontractor to waive any provision of this section.

(e) The Legislature hereby declares that the provisions of this section are of statewide concern and are necessary to encourage full participation by contractors and subcontractors in public contract procedures.

(f) The escrow agreement used hereunder shall be null, void, and unenforceable unless it is substantially similar to the following form:

ESCROW AGREEMENT FOR SECURITY DEPOSITS IN LIEU OF RETENTION

This Escrow Agreement is made and entered into by and between _____

whose address is _____ hereinafter called "Owner,"

_____ whose address is _____

hereinafter called "Contractor" and _____ whose address is _____

_____ hereinafter called "Escrow Agent."

For the consideration hereinafter set forth, the Owner, Contractor, and Escrow Agent agree as follows:

(1) Pursuant to Section 22300 of the Public Contract Code of the State of California, Contractor has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by Owner pursuant to the Construction Contract entered into between the Owner and Contractor for _____ in the amount of _____ dated _____ (hereinafter referred to as the "Contract"). Alternatively, on written request of the Contractor, the Owner shall make payments of the retention earnings directly to the Escrow Agent. When the Contractor deposits the securities as a substitute for Contract earnings, the Escrow Agent shall notify the Owner within 10 days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the Contract between the Owner and Contractor. Securities shall be held in the name of _____, and shall designate the Contractor as the beneficial owner.

(2) The Owner shall make progress payments to the Contractor for those funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that the Escrow Agent holds securities in the form and amount specified above.

(3) When the Owner makes payment of retentions earned directly to the Escrow Agent, the Escrow Agent shall hold them for the benefit of the Contractor until the time that the escrow created under this contract is terminated. The Contractor may direct the investment of the payments into securities. All terms and conditions of this agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the Owner pays the Escrow Agent directly.

(4) Contractor shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account and all expenses of the Owner. These expenses and payment terms shall be determined by the Owner, Contractor, and Escrow Agent.

(5) The interest earned on the securities or the money market accounts held in escrow and all interest earned on that interest shall be for the sole account of Contractor and shall be subject to withdrawal by Contractor at any time and from time to time without notice to the Owner.

(6) Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from the Owner to the Escrow Agent that Owner consents to the withdrawal of the amount sought to be withdrawn by Contractor.

(7) The Owner shall have a right to draw upon the securities in the event of default by the Contractor. Upon seven days' written notice to the Escrow Agent from the owner of the default, the Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the Owner.

(8) Upon receipt of written notification from the Owner certifying that the Contract is final and complete, and that the Contractor has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to Contractor all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow

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shall be closed immediately upon disbursement of all moneys and securities on deposit and payments of fees and charges.

(9) Escrow Agent shall rely on the written notifications from the Owner and the Contractor pursuant to Sections (5) to (8), inclusive, of this agreement and the Owner and Contractor shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of the securities and interest as set forth above.

(10) The names of the persons who are authorized to give written notice or to receive written notice on behalf of the Owner and on behalf of Contractor in connection with the foregoing, and exemplars of their respective signatures are as follows:

On behalf of Owner:

On behalf of Contractor:

On behalf of Escrow Agent:

Title

Title

Title

Name

Name

Name

Signature

Signature

Signature

Address

Address

Address

At the time the Escrow Account is opened, the Owner and Contractor shall deliver to the Escrow Agent a fully executed counterpart of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their proper officers on the date first set forth above.

Owner

Contractor

Title

Title

Name

Name

Signature

Signature

8 - LABOR CODE SECTION 6500
EMPLOYMENT PERMITS

(a) For those employments or places of employment that by their nature involve a substantial risk of injury, the Division shall require the issuance of a permit prior to the initiation of any practices, work, method, operation, or process of employment. The permit requirement of this section is limited to employment or places of employment that are any of the following:

(1) Construction of trenches or excavations which are five feet or deeper and into which a person is required to descend.

(2) The construction of any building, structure, falsework, or scaffolding more than three stories high or the equivalent height.

(3) The demolition of any building, structure, falsework, or scaffold more than three stories high or the equivalent height.

(4) The underground use of diesel engines in work in mines and tunnels.

This subdivision does not apply to motion picture, television, or theater stages or sets, including, but not limited to, scenery props, backdrops, flats, greenbeds, and grids.

(b) On or after January 1, 2000, this subdivision shall apply to motion picture, television, or theater stages or sets, if there has occurred within any one prior calendar year in any combination at separate locations three serious injuries, fatalities, or serious violations related to the construction or demolition of sets more than 36 feet in height for the motion picture, television, and theatrical production industry.

An annual permit shall be required for employers who construct or dismantle motion picture, television, or theater stages or sets that are more than three stories or the equivalent height. A single permit shall be required under this subdivision for each employer, regardless of the number of locations where the stages or sets are located. An employer with a currently valid annual permit issued under this subdivision shall not be required to provide notice to the division prior to commencement of any work activity authorized by the permit. The division may adopt procedures to permit employers to renew by mail the permits issued under this subdivision. For purposes of this subdivision, "motion picture television or theater stages or sets" include, but are not limited to, scenery, props, backdrops, flats, greenbeds, and grids.

9 - LABOR CODE SECTION 6705
TRENCH EXCAVATION PLAN REQUIREMENT

No contract for public works involving an estimated expenditure in excess of twenty-five thousand dollars (\$25,000), for the excavation of any trench or trenches five feet or more in depth, shall be awarded unless it contains a clause requiring submission by the contractor and acceptance by the awarding body or by a registered civil or structural engineer, employed by the awarding body, to whom authority to accept has been delegated, in advance of excavation, of a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If such plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer.

Nothing in this section shall be deemed to allow the use of a shoring, sloping, or protective system less effective than that required by the Construction Safety Orders.

Nothing in this section shall be construed to impose tort liability on the awarding body or any of its employees.

The terms "public works" and "awarding body", as used in this section, shall have the same meaning as in Sections 1720 and 1722, respectively, of the Labor Code.

10 - LABOR CODE SECTION 6707
SEPARATE BID ITEM FOR SHEETING, SHORING, ETC.

Whenever the state, a county, city and county, or city issues a call for bids for the construction of a pipeline, sewer, sewage disposal system, boring and jacking pits, or similar trenches or open excavations, which are five feet or deeper, such call shall specify that each bid submitted in response thereto shall contain, as a bid item, adequate sheeting, shoring, and bracing, or equivalent method, for the protection of life or limb, which shall conform to applicable safety orders. Nothing in this section shall be construed to impose tort liability on the body awarding the contract or any of its employees. This section shall not apply to contracts awarded pursuant to the provisions of Chapter 3 (commencing with Section 14250) of Part 5 of Division 3 of Title 2 of the Government Code.

11 - CONSTRUCTION CONTRACT REQUIREMENTS CHECKLIST
STATE REVOLVING FUND LOAN PROGRAM
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF FINANCIAL ASSISTANCE

Loan Applicant:* _____ Project No. _____

Project Title: _____

CONSTRUCTION CONTRACT REQUIREMENTS (CCR)

Contract Page No.	Satisfy Yes/No	
_____	_____	Date, Time, and Location of the Bid Opening.
_____	_____	Thirty (30) Days between Bid Advertisement and Bid Opening.
_____	_____	Contract Period / Equipment Delivery Date.
_____	_____	Contract Awarded to Lowest, Responsive, Responsible Bidder.
_____	_____	Bid Guarantee Bond (at least 10% of bid).
_____	_____	Performance Bond (100% of bid).
_____	_____	Payment Bond (100% of bid).
_____	_____	Elimination of Segregated Facilities
_____	_____	State's MBE/WBE "Fair Share" Objectives (Comply with MBE/WBE guidelines).
_____	_____	Identification of Contractors License Classification; Public Contract Code Section 3300.
_____	_____	Use of Brand Names; Public Contract Code Section 3400.
_____	_____	Listing of Subcontractors; Public Contract Code Section 4104.
_____	_____	"Acts of God" Insurance Exclusion; Public Contract Code Section 7105.
_____	_____	"Non-Collusion Affidavit", Public Contract Code Section 7106
_____	_____	Project Progress Payments; Public Contract Code Section 9203.
_____	_____	Securities In Lieu of Retention Permitted; Public Contract Code Section 22300.
_____	_____	Employment Permits; Labor Code Section 6500.
_____	_____	Trench Excavation Plan Requirement; Labor Code Section 6705.
_____	_____	Separate Bid Item for Sheeting, Shoring, Etc.; Labor Code Section 6707.
_____	_____	BOILERPLATE DOCUMENTS (state provided, to be included in the specifications)

****Please complete this checklist and return with the Plans & Specifications.***

BOILERPLATE

1 - STATE WAGE RATE CLAUSES (Facilities Plan Approval after June 18, 1998, Federal Wage Rates are not required)

Pursuant to Sections 1720 et seq., and 1770 et seq., of the California Labor Code, the successful bidder shall pay not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations for public works projects of more than one thousand dollars (\$1,000). Copies of such prevailing rate or per diem wage are on file at (loan recipient's principal office), which copies shall be made available to any interested party on request. The successful bidder shall post a copy of such determinations at each job site.

The successful bidder intending to use a craft or classification not shown on the prevailing rate determinations may be required to pay the rate of the craft or classification most closely related to it.

2 - LABOR CODE SECTION 1776 COMPLETE PAYROLL RECORDS; CERTIFIED AND AVAILABLE

(a) Each contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following: (1) The information contained in the payroll record is true and correct. (2) The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project.

(b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor on the following basis: (1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.

(2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.

(3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of the contractor.

(c) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division.

(d) A contractor or subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within 10 days after receipt of a written request.

(e) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body, the Division of Apprenticeship Standards, or the Division of Labor Standards

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Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (Section 175a of Title 29 of the United States Code) shall be marked or obliterated only to prevent disclosure of an individual's name and social security number. A joint labor management committee may maintain an action in a court of competent jurisdiction against an employer who fails to comply with Section 1774. The court may award restitution to an employee for unpaid wages and may award the joint labor management committee reasonable attorney's fee and costs incurred in maintaining the action. An action under this subdivision may not be based on the employer's misclassification of the craft of a worker on its certified payroll records. Nothing in this subdivision limits any other available remedies for a violation of this chapter.

(f) The contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.

(g) The contractor or subcontractor shall have 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in subdivision (a). In the event that the contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

(h) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section.

(i) The director shall adopt rules consistent with the California Public Records Act, (Chapter 3.5 (commencing with Section 6250), Division 7, Title 1, Government Code) and the Information Practices Act of 1977, (Title 1.8 (commencing with Section 1798), Part 4, Division 3, Civil Code) governing the release of these records, including the establishment of reasonable fees to be charged for reproducing copies of records required by this section.

3 - **LABOR CODE SECTION 1777.5**
 EMPLOYMENT OF PROPERLY REGISTERED APPRENTICES

(a) Nothing in this chapter shall prevent the employment of properly registered apprentices upon public works.

(b) Every apprentice employed upon public works shall be paid the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered and shall be employed only at the work of the craft or trade to which he or she is registered.

(c) Only apprentices, as defined in Section 3077, who are in training under apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written apprentice agreements under Chapter 4 (commencing with Section 3070) of Division 3 are eligible to be employed at the apprentice wage rate on public works. The employment and training of each apprentice shall be in accordance with either of the following:

- (1) The apprenticeship standards and apprentice agreements under which he or she is training.
- (2) The rules and regulations of the California Apprenticeship Council.

(d) When the contractor to whom the contract is awarded by the state or any political subdivision, in performing any of the work under the contract, employs workers in any apprenticeable craft or trade, the contractor shall employ apprentices in at least the ratio set forth in this section and may apply to any apprenticeship program in the craft or trade that can provide apprentices to the site of the public work for a certificate approving the contractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, the decision of the apprenticeship program to approve or deny a certificate shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving the contractor,

State Revolving Fund Loan Program CCR and Boilerplate

shall arrange for the dispatch of apprentices to the contractor. A contractor covered by an apprenticeship program's standards shall not be required to submit any additional application in order to include additional public works contracts under that program.

"Apprenticeable craft or trade," as used in this section, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the California Apprenticeship Council. As used in this section, "contractor" includes any subcontractor under a contractor who performs any public works not excluded by subdivision (o).

(e) Prior to commencing work on a contract for public works, every contractor shall submit contract award information to an applicable apprenticeship program that can supply apprentices to the site of the public work. The information submitted shall include an estimate of journeyman hours to be performed under the contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the awarding body if requested by the awarding body. Within 60 days after concluding work on the contract, each contractor and subcontractor shall submit to the awarding body, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the contract. The information under this subdivision shall be public. The apprenticeship programs shall retain this information for 12 months.

(f) The apprenticeship program that can supply apprentices to the area of the site of the public work shall ensure equal employment and affirmative action in apprenticeship for women and minorities.

(g) The ratio of work performed by apprentices to journeymen employed in a particular craft or trade on the public work may be no higher than the ratio stipulated in the apprenticeship standards under which the apprenticeship program operates where the contractor agrees to be bound by those standards, but, except as otherwise provided in this section, in no case shall the ratio be less than one hour of apprentice work for every five hours of journeyman work.

(h) This ratio of apprentice work to journeyman work shall apply during any day or portion of a day when any journeyman is employed at the jobsite and shall be computed on the basis of the hours worked during the day by journeymen so employed. Any work performed by a journeyman in excess of eight hours per day or 40 hours per week shall not be used to calculate the ratio. The contractor shall employ apprentices for the number of hours computed as above before the end of the contract or, in the case of a subcontractor, before the end of the subcontract. However, the contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the jobsite. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Chief of the Division of Apprenticeship Standards, upon application of an apprenticeship program, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification.

(i) A contractor covered by this section that has agreed to be covered by an apprenticeship program's standards upon the issuance of the approval certificate, or that has been previously approved for an apprenticeship program in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the applicable apprenticeship standards, but in no event less than the 1-to-5 ratio required by subdivision (g).

(j) Upon proper showing by a contractor that he or she employs apprentices in a particular craft or trade in the state on all of his or her contracts on an annual average of not less than one hour of apprentice work for every five hours of labor performed by journeymen, the Chief of the Division of Apprenticeship Standards may grant a certificate exempting the contractor from the 1-to-5 hourly ratio, as set forth in this section for that craft or trade.

(k) An apprenticeship program has the discretion to grant to a participating contractor or contractor association a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the contractor from the 1-to-5 ratio set forth in this section when it finds that any one of the following conditions is met:

- (1) Unemployment for the previous three-month period in the area exceeds an average of 15 percent.
- (2) The number of apprentices in training in the area exceeds a ratio of 1 to 5.
- (3) There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis.
- (4) Assignment of an apprentice to any work performed under a public works contract would create a condition that would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large, or the specific task to which the apprentice is to be assigned is of a nature that training cannot be provided by a journeyman.

(l) When an exemption is granted pursuant to subdivision (k) to an organization that represents contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis, the member contractors shall not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.

State Revolving Fund Loan Program CCR and Boilerplate

(m) (1) A contractor to whom a contract is awarded, who, in performing any of the work under the contract, employs journeymen or apprentices in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council the same amount that the director determines is the prevailing amount of apprenticeship training contributions in the area of the public works site. A contractor may take as a credit for payments to the council any amounts paid by the contractor to an approved apprenticeship program that can supply apprentices to the site of the public works project. The contractor may add the amount of the contributions in computing his or her bid for the contract.

(2) At the conclusion of the 2002-03 fiscal year and each fiscal year thereafter, the California Apprenticeship Council shall distribute training contributions received by the council under this subdivision, less the expenses of the Division of Apprenticeship Standards for administering this subdivision, by making grants to approved apprenticeship programs for the purpose of training apprentices. The funds shall be distributed as follows:

(A) If there is an approved multiemployer apprenticeship program serving the same craft or trade and geographic area for which the training contributions were made to the council, a grant to that program shall be made.

(B) If there are two or more approved multiemployer apprenticeship programs serving the same craft or trade and geographic area for which the training contributions were made to the council, the grant shall be divided among those programs based on the number of apprentices registered in each program.

(C) All training contributions not distributed under subparagraphs (A) and (B) shall be used to defray the future expenses of the Division of Apprenticeship Standards.

(3) All training contributions received pursuant to this subdivision shall be deposited in the Apprenticeship Training Contribution Fund, which is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, all money in the Apprenticeship Training Contribution Fund is hereby continuously appropriated for the purpose of carrying out this subdivision and to pay the expenses of the Division of Apprenticeship Standards.

(n) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. The stipulations shall fix the responsibility of compliance with this section for all apprenticeable occupations with the prime contractor.

(o) This section does not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor when the contracts of general contractors or those specialty contractors involve less than thirty thousand dollars (\$30,000).

(p) All decisions of an apprenticeship program under this section are subject to Section 3081.

4 - LABOR CODE SECTION 1810
 DEFINITION: A LEGAL DAY'S WORK

Eight hours labor constitutes a legal day's work in all cases where the same is performed under the authority of any law of this State, or under the direction, or control, or by the authority of any officer of this State acting in his official capacity, or under the direction, or control or by the authority of any municipal corporation, or of any officer thereof. A stipulation to that effect shall be made a part of all contracts to which the State or any municipal corporation therein is a party.

5 - LABOR CODE SECTION 1813
 PENALTY FOR OVERTIME ON ANY PUBLIC WORK CONTRACT

The contractor or subcontractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25) for each worker employed in the execution of the contract by the respective contractor or subcontractor for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of this article. In awarding any contract for public work, the awarding body shall cause to be inserted in the contract a stipulation to this effect. The awarding body shall take cognizance of all violations of this article committed in the course of the execution of the contract, and shall report them to the Division of Labor Standards Enforcement.

6 - LABOR CODE SECTION 1815
MINIMUM OVERTIME PAY

Notwithstanding the provisions of Sections 1810 to 1814, inclusive, of this code, and notwithstanding any stipulation inserted in any contract pursuant to the requirements of said sections, work performed by employees of contractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than one and one-half (1.5) times the basic rate of pay.

7 - LABOR CODE SECTION 1860
CONTRACT PROVISION

The awarding body shall cause to be inserted in every public works contract a clause providing that, in accordance with the provisions of Section 3700 of the Labor Code, every contractor will be required to secure the payment of compensation to his employees.

8 - LABOR CODE SECTION 1861
CONTRACTOR CERTIFICATION TO LABOR CODE SECTION 3700

Each contractor to whom a public works contract is awarded shall sign and file with the awarding body the following certification prior to performing the work of the contract: "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

9 - CULTURAL RESOURCES

In accordance with the National Historic Preservation Act of 1966, (16 U.S.C. 470), and State statutes regarding the unexpected discovery of human remains, the following procedures are implemented to insure historic preservation and fair compensation to the Contractor for delays attendant to cultural resources investigations.

In the event potential Historical, Archeological, or Cultural Resources (herein after cultural resources) are discovered during subsurface excavations at the site of construction, the following procedures shall be instituted:

1) The Engineer shall issue a "Stop Work Order" directing the Contractor to cease all construction operations at the location of such potential cultural resources find. If the find includes human remains, the County Coroner must be contacted immediately.

2) Such "Stop Work Order" shall be effective until such time as a qualified archeologist can be called to evaluate the importance of these potential cultural resources and make recommendations to the State Water Resources Control Board Cultural Resources Officer (CRO). Any "Stop Work Order" shall contain the following:

- a) A clear description of the work to be suspended;
- b) Any instructions regarding issuance of further orders by the Contractor for material services;
- c) Guidance as the action to be taken on subcontracts;
- d) Any suggestions to the Contractor as to minimization of his costs;
- e) Estimated duration of the temporary suspension.

If the archeologist in consultation with the SWRCB CRO determines that the potential find is an important resource and warrants further investigation and/or mitigation, the Engineer shall extend the duration of the "Stop Work Order" in writing, and the Contractor shall suspend work at the location of the find.

Equitable adjustment of the construction contract shall be made in the following manner:

1) Time Extension

If the work temporarily suspended is on the "critical path", the total number of days for which the suspension is in effect shall be added to the number of allowable contract days.

If a portion of work at the time of such suspension is not on the “critical path”, but subsequently becomes work on the critical path, the allowable contract time will be computed from the date such work is classified as on the critical path.

2) Additional Compensation

If, as a result of a suspension of the work, the Contractor sustains a loss which could not have been avoided by his judicious handling of forces, and equipment, or redirection of forces or equipment to perform other work on the contract, there shall be paid to the Contractor an amount as determined by the Engineer to be fair and reasonable compensation for the Contractor’s actual loss in accordance with the following:

a) Idle Time of Equipment

Compensation for equipment idle time will be determined on a force account (time and materials) basis, and shall include the cost of extra moving of equipment and rental loss. The right-of-way delay factor for each classification of equipment shown in the California Department of Transportation publication entitled, Equipment Rental Rates and the General Prevailing Wage Rates, will be applied to any equipment rental rates.

b) Idle Time of Labor

Compensation for idle time of workers will be determined by the Engineer as “Labor” less any actual productivity factor of this portion of the work force.

c) Increased Costs of Labor and Materials

Increased costs of labor and materials will be compensated only to the extent such increase was in fact caused by the suspension, as determined by the Engineer.

Compensation for actual loss due to idle time of either equipment or labor shall not include markup for profit.

The hours for which compensation will be paid will be the actual normal working time during which such delay condition exists, but will in no case exceed eight hours in any one day.

The days for which compensation will be paid shall be full or partial calendar days, excluding Saturdays, Sundays, and legal holidays, during the existence of such delay.

CONTRACT PROVISIONS OF THE
STATE WATER RESOURCES CONTROL BOARD (SWRCB)
DIVISION OF FINANCIAL ASSISTANCE
RELATIVE TO THE UTILIZATION OF
MINORITY BUSINESS ENTERPRISE (MBE) AND
WOMEN BUSINESS ENTERPRISE (WBE)
ON CLEAN WATER PROGRAM CONSTRUCTION CONTRACTS IN CALIFORNIA

This document and attachments shall be included by the owner as a contract provision for all construction contracts exceeding \$10,000.

Compliance with the requirements of this document and attachments satisfies the MBE/WBE requirements of the U. S. Environmental Protection Agency and the SWRCB. This document supersedes any conflicting requirements.

Failure to take the five (5) affirmative steps listed under Requirements, Section A, prior to bid opening and to submit "Minority Business Enterprise/Women Business Enterprise Information" (Form 4) with the bid shall cause the bid to be rejected as a non-responsive bid.

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Section 1: APPROVAL TO AWARD (ATA) PROCESS

REQUIRED FOR STATE REVOLVING FUND LOANS DIVISION OF FINANCIAL ASSISTANCE (DFA)

The purpose of this document is to provide a summary of the MBE/WBE “good faith” effort for SRF Loan contractors and recipients. Section 1 provides the contractor and recipient with a brief overview of the ATA process. The MBE/WBE “good faith” effort is one element of the ATA process summarized below. The ATA request package submitted to DFA for approval must contain all of the following:

1. Completed ATA form (original must be signed by the recipient’s authorized representative or designee).
2. A legal description of the site on which the project is to be constructed and an opinion signed by competent title counsel describing the interest the applicant has in the site, including information as to any easements and rights-of-way and certifying that the estate or interest is legal and valid.
3. Tabulation of all bids received and the engineer’s estimate.
4. Copy of the bid proposal chosen.
5. Evidence of advertising (submit a copy of newspaper advertisement for the project).
6. All MBE/WBE documentation, which includes Forms 1 through 6. Also, documentation that the local Small Business Administration and Minority Business Development Agency centers were contacted at least five (5) working days by the prime contractor prior to the need for referrals to MBE/WBE subcontractors and documentation that invitations were sent to MBE/WBE subcontractors at least seven (7) working days prior to bid opening.
7. A dedicated source of revenue (ordinance or resolution).
8. Disbursements of SRF funds may take up to 90 days. Some construction costs may be ineligible for SRF funding. Provide a cash flow projection showing the source and expected time of receipt of funds needed to meet project cash requirements.

Detailed directions for completing the ATA form are provided on the form. If you have any questions regarding the ATA process, please contact Ken Gonzales of DFA at (916) 341-5683 or gonzalek@swrcb.ca.gov.

Section 2: PRIME CONTRACTOR & RECIPIENT RESPONSIBILITIES

PARTICIPATION RESPONSIBILITIES FOR PRIMES AND THEIR SUBCONTRACTORS

All recipients of federal funds from USEPA, as well as their prime contractors and subcontractors, must make every effort to solicit bids from eligible MBE/WBEs. This information must be documented and reported to DFA as described in this document.

The MBE/WBE responsibilities of the prime contractor are:

1. Conduct a “good faith” effort to ensure maximum MBE/WBE participation in the project.
2. Complete or obtain from MBE/WBE subcontractors, all of the completed forms required in these guidelines and submit them to the recipient.
3. Report actual MBE/WBE participation on a quarterly basis to the recipient.

The MBE/WBE responsibilities of the recipient are:

1. Ensure that the prime contractor meets the responsibilities identified in these guidelines.
2. Submit all documentation identified in these guidelines to DFA and maintain all records in the project files for later access or auditing.

3. Provide quarterly reports on MBE/WBE procurements to DFA.

Section 3: “Good Faith” Effort Process

Any public or private entity receiving federal funds must demonstrate that efforts were made to attract MBE/WBEs on any SRF contracts. The process to attract MBE/WBEs is referred to as the “good faith” effort. This effort requires the recipient, prime contractor and any subcontractors to take the steps listed below to assure that MBE/WBEs are used whenever possible as sources of supplies, construction, equipment or services. Failure to take the steps outlined below and submit Form 4, Prime Contractor/Recipient Selected MBE/WBEs, prior to bid opening, shall cause the bid to be rejected as non-responsive. Use Forms 1 through 6 to document the process. If it is not practical or possible to comply with one or more of the five steps, prepare an explanation and submit it with the ATA package.

STEP 1: Divide the total requirements, when economically feasible, into small tasks or quantities to permit maximum participation. Evidence submitted must illustrate that the work was divided into small proprietary portions (e.g. paving, electrical, landscaping, revegetation).

STEP 2: Establish delivery schedules, when work requirements permit, that encourage maximum MBE/WBE participation.

STEP 3: Use the services of the U.S. Small Business Administration (SBA) and the Minority Business Development Agency (MBDA) of the U. S. Department of Commerce (DOC) in soliciting qualified MBE/WBEs. Utilization of these resources is required at no cost. These agencies offer several services, including Internet access to databases of MBE/WBEs.

For additional assistance, the recipient or contractor could telephone the local offices of both agencies in their area (SBA Minority Enterprise Development Offices and DOC MBDA Regional Centers). The Internet web sites also include names, addresses, and phone or fax numbers of local SBA and MBDA centers. There are contact phone numbers listed in Step 5 that will assist you in reaching the two offices if the Internet is unavailable.

Do not write to these sources.

The prime contractor must provide documentation that the local SBA/MBDA offices or web sites were notified of the contracting opportunity (allow at least **five working days** for a response). Documentation must not only include the efforts to contact the information sources and list the contract opportunity, but also the solicitation and response to the bid request.

STEP 4: Include qualified MBE/WBEs on solicitation lists and record the information. Solicitation should be as broad as possible. The following web sites include a list of available sources for expanding the search for eligible MBE/WBEs: <http://www.sba.gov> and <http://www.mbda.gov>. If MBE/WBE sources are *not* located, explain why and describe the efforts made. See Step 5 for more detailed information.

For all contracts, the prime contractor must send invitations to at least three (or all, if less than three) MBE/WBE vendors for each item of work referred by sources contacted. The invitations must adequately specify the items for which bids are requested. The record of “good faith” efforts must indicate a real desire for a positive response, such as a certified

mail receipt or a documented telephone conversation. **(A regular letter or an unanswered telephone call is *not* an adequate “good faith” effort).** A list of all sub-bidders, including the bidders **not** selected, and bid amount for each item of work must be submitted. A sample list is shown in Form 5, Sample Summary of Bids Received from Subcontractors. If a low bid was not accepted, an explanation must be provided.

STEP 5: Solicit available MBEs and WBEs whenever they are potential sources. The prime contractor must provide invitations to MBE/WBE sub-bidders at least **seven working days** prior to the bid opening date.

Federal Agencies (must be contacted):

Name and Address	Telephone and Web Site
U.S. Small Business Administration	(415) 744-6820 Extension 0
455 Market Street, Suite 600	PRO-Net Database: http://www.sba.gov/ ¹
San Francisco, CA 94105	Bid Notification: http://web.sba.gov/subnet/
RE: Minority Enterprise Development Offices	
U.S. Department of Commerce	(415) 744-3001
Minority Business Development Agency	Phoenix/ Opportunity Database:
211 Main Street, Room 1280	http://www.mbda.gov
San Francisco, CA 94105	RE: Business Development Centers

State Agencies (optional contacts):

Name and Address	Telephone and Web Site
California Department of Transportation	Mailing Address: PO Box 942874
(CALTRANS) Business Enterprise Program ²	Sacramento, CA 94274-0015
1820 Alhambra Blvd.	(916) 227-9599
Sacramento, CA 95816	www.dot.ca.gov/hq/bep
CA Public Utilities Commission (CPUC)³	
505 Van Ness Avenue	http://www.cpuc.ca.gov/static/aboutcpuc/divisions/executive+office/wmbe
San Francisco, CA 94102-3298	

¹ PRO-Net is the SBA’s electronic search engine, containing business profiles for nearly 200,000 businesses. The SBA requests Internet contact only. A list of potential firms downloaded from PRO-Net will verify that the bidder made the required contact with the SBA.

² Based on the federal Disadvantaged Business Enterprises (DBE) program, CALTRANS maintains a database and provides directories of minority and woman-owned firms.

³ CPUC maintains a database of MBE/WBE-owned business enterprises and serves to inform the public.

Section 4: Non-Governmental Local Contacts

MINORITY BUSINESS ENTERPRISE/WOMAN BUSINESS ENTERPRISE (MBE/WBE) RESOURCES

The following organizations provide services to identify potential MBE/WBEs. Some of the organizations charge a fee or require membership fees to provide their services. Services provided may include the entire good faith effort process for recipients that need comprehensive assistance.

Humboldt Builder's Exchange Inc.

2355 Myrtle Ave.
Eureka, CA 95501
Phone #: (707) 442-3708
FAX #: (707) 442-6051
www.humvx.com

California Daily Bid Advisor/Challenge News

1276 Lincoln Ave. #203
San Jose, CA 95125
Phone #: (408) 998-0241
or (800) 298-0240
FAX #: (408) 998-2534

California Procurement Training and Assistance Center at West Valley

1 West Campbell Ave., Ste J70
Campbell CA 95008
Phone #: (408) 871-4390
FAX #: (408) 378-2034

Contractors Assistance Center

PO Box 7675
Redlands, CA 92375
Phone #: (800) 742-4124
FAX #: (800) 742-4125

Eldridge Bid Reporter, M/W/DVBE Assistance

PO Box 699
West Sacramento, CA 95691
Phone #: (916) 444-7618
FAX #: (916) 444-7731
www.ebrbids.com

Regis Communications Construction Bid Source Interactive (CBSI)

PO Box 568
Burson, CA 95225-0568
Phone #: (209) 772-3670
FAX #: (800) 560-7266
www.Regis-usa.com
1-800-962-4162

Riverside Community College District

Procurement Assistance Center
2038 Iowa Ave., Ste. 100
Riverside, CA 92507
Phone #: (909) 788-2559
FAX #: (909) 788-2515
www.resources4u.com/pac

Small Business Exchange

703 Market St., Ste. 1000
San Francisco, CA 94103
Phone #: (415) 778-6250
FAX #: (415) 778-6255
www.sbeinc.com

Section 5: Reporting Requirements

All requests for services, supplies, equipment or construction solicited by the SWRCB, other governmental agencies, non-profit agencies, or private businesses are subject to the MBE/WBE requirements. **These requirements apply to the prime contractor and all subcontractors.** The only exceptions to this requirement are contracts with governmental or non-profit agencies.

For the duration of the contract, all primary and subcontractors will be required to report progress made in fulfilling the “good faith” effort in their quarterly reports. Failure to provide this information as stipulated in the contract language will be cause for contract termination. DFA staff will provide recipients with the forms and instructions to report their “good faith” efforts after the ATA.

Once a bidder is selected, the prime contractor should compile the information required by the “good faith” effort process. **All information supporting the “good faith” effort must be submitted within ten working days after the bid opening.** Recipient shall review the successful bidder’s records closely to be sure that, prior to bid opening, all required “good faith” efforts were made. Failure of either the bidder or prime contractor/subcontractor to follow the process and provide the necessary information to DFA could jeopardize the bidding process. The following situations and circumstances require actions as indicated:

1. If the apparent successful low bidder was rejected a complete explanation must be provided.
2. Each MBE/WBE firm utilized must complete and submit the Form 3, Contractor Self-Certification with the bid.
3. If additional subcontracts become necessary after the award of the prime contract, provide Form 3 to DFA within ten working days following the award of each new subcontract.
4. Any deviation from the information provided at the time of the bid shall not result in a reduction of MBE/WBE participation without prior approval of
5. Failure of the apparent low bidder to perform the five “good faith” effort steps *prior* to bid opening and submittal of Form 4 with the bid, will result in its bid being declared non-responsive. The contract may then be awarded to the next low, responsive, responsible bidder that meets the requirements or the recipient may re-advertise the project.
6. The apparent successful low bidder must submit documentation to the recipient within ten working days following bid opening showing that, prior to the bid opening, all required “good faith” efforts were made.

Section 6: Definitions

A bona fide minority or women-owned business enterprise (MBE/WBE) is a:

- (1) MBE or WBE that has submitted a “Minority or Women-Owned Business Enterprise Contractor Self-Certification” Form 3, and
- (2) A firm that has been accepted as a bona fide MBE or WBE by the recipient.

In addition, a bona fide MBE/WBE must be an independent business concern that is at least 51% owned, controlled, and operated by minority group members (see definition of minority group member) or women. Ownership and control can be measured by:

- Contract work performance responsibility.
- Management responsibility.
- At least 51% share of profits and risk.
- Other data (such as voting rights) that may clarify ownership or control.

Control means exercising the power to make policy decisions.

Operate means being actively involved in the day-to-day management of the business.

Determination of whether a business is at least 51% owned by a woman or women shall be made without regard to community property laws. An otherwise qualified WBE which is 51% owned by a married woman in a community property state will not be disqualified because her husband has a 50% interest in her share. Similarly, a business that is 51% owned by a married man and 49% by an unmarried woman does not become a qualified WBE by virtue of the wife's 50% interest in the husband's share of the business.

A joint venture is a business enterprise formed by a combination of firms under a joint venture agreement. To qualify as a bona fide MBE/WBE, the minority-owned or women-owned and controlled firms in the joint venture must:

- Satisfy all requirements for bona fide MBE/WBE participation in their own rights.
- Share a clearly defined percentage of the ownership, management responsibilities, risks, and profits of the joint venture. Only this percentage of ownership will be credited towards the MBE/WBE goal.

A minority group member is a citizen of the United States and one of the following:

- **Native American** consists of American Indian, Eskimo, Aleut, and native Hawaiian. To qualify, the person must meet one of the following criteria:
 1. Native Americans are at least one-fourth Indian descent (as evidenced by registration with the Bureau of Indian Affairs).
 2. Characteristic Indian appearance and features.
 3. Characteristic Indian name.
 4. Recognition in the community as an Indian.
 5. Membership in a tribe, band, or group of American Indians (recognized by the Federal Government), as evidenced by a tribal enrollment number or similar indication.
- **African-American** consists of individuals having origins in any of the black racial groups of Africa.
- **Asian-Pacific American** consists of individuals having origins in any of the original peoples of the Far East, Southeast Asia, and the Indian subcontinent. This area includes, for example, China, Japan, Korea, the Philippines, Vietnam, Samoa, Guam, U.S. Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, and Taiwan. The Indian subcontinent takes in the countries of India, Pakistan, Bangladesh, Sri Lanka, Nepal, Sikkim, and Bhutan.
- **Hispanic American** consists of individuals with origins from Puerto Rico, Mexico, Cuba, or South or Central America. Only those persons from Central and South American countries who are of Spanish origin, descent, or culture should be included in this category. Persons from Brazil, Guyana, Surinam or Trinidad, for example, would be classified according to their race and would not necessarily be included in the Hispanic category. In addition, this category does not include persons from Portugal, who should be classified according to race.

In cases where a firm is owned and controlled by a minority woman or women, the percentage may be credited towards MBE participation or as WBE participation, or allocated, but may not be credited fully to both.

Recipient – An agency (County, City, Special District, etc.) applying for a SRF loan to construct a project.

Contractor – Refers to any recipient of funds who will participate in some phase of construction. The contractor receiving funds directly from the recipient for construction is the prime contractor. Contractors working for the prime contractor are subcontractors.

Project Manager – If DFA staff is responsible for managing the project, the Project/Contract Manager is responsible for review during the planning, design and contract development phases.

Section 7: MBE/WBE Forms

The following forms are provided to report project MBE/WBE information. They are available in electronic form from Ken Gonzales at (916) 341-5683 or gonzalek@swrcb.ca.gov. If you have any questions about completing these forms or when to turn them in, please contact Mr. Gonzales.

All Forms, where applicable, must have original signature and date.

The following table provides information on who completes each form and where the forms are to be sent:

Form#	Description	Completed By	Submit To	Forward To
1	Solicitation	Prime	Recipient	DFA with ATA
2	Bids Received List	Prime	Recipient	DFA with ATA
3 (Att A)	Self-Certification	MBE/WBE Sub	Prime	Recipient, DFA w/ATA
4 (Att B)	Selected Subcontractors	Prime (with bid)	Recipient	DFA with ATA
5	Sample Summary	Prime	Recipient	DFA with ATA
6	Positive Effort Certification	Recipient	DFA w/ATA	

FORM 1

MINORITY AND WOMEN OWNED BUSINESS ENTERPRISE (MBE/WBE)
“GOOD FAITH” EFFORT LIST OF CONTRACTORS SOLICITED

Contractor Name	Contractor Address	Category (MBE or WBE)	How Located	Date of Contact	Contact Method	Task Description	Delivery Schedule	Response (Yes/No)

Form for information required to be submitted with the ATA package.

FORM 2

MINORITY AND WOMEN OWNED BUSINESS ENTERPRISE (MBE/WBE)
 "GOOD FAITH" EFFORT BIDS RECEIVED LIST

[illegible]

Form for information required to be submitted with the ATA package.

FORM 3 (Attachment A)
MINORITY- OR WOMEN-OWNED BUSINESS ENTERPRISE
(MBE/WBE)

CONTRACTOR SELF CERTIFICATION

Firm Name: _____ Phone: _____

Address: _____

Principal Service or Product: _____

PLEASE INDICATE PERCENTAGE OF OWNERSHIP

☐ MBE _____% Ownership

☐ WBE _____% Ownership

☐ Prime Contractor

☐ Supplier of Material/Service

☐ Subcontractor

☐ Broker

☐ Sole Ownership

☐ Corporation

☐ Partnership

☐ Joint Venture

I hereby certify that this firm is a Minority or Women Business Enterprise as defined in Public Contract Code, Section 10115.1. In making this certification, I am aware of Sections 12650 et seq. of the Government Code, providing for the imposition of treble damages for making false claims against the State and Section 10115.10 of the Public Contract Code, making it a crime to intentionally make an untrue statement in this certificate.

Certified by: _____ Title: _____

MBE/WBE Sub (ORIGINAL SIGNATURE AND DATE REQUIRED)

Name: _____ Date: _____

Additional proof may be required upon written challenge of this certification by any person or agency. Falsification of this certification by a firm selected to perform federally funded work may result in a determination that the firm is non-responsive and ineligible for future contracts.

This form must be submitted within 10 working days after the bid opening date.

FORM 4 (Attachment B)
PRIME CONTRACTOR/RECIPIENT
SELECTED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES (MBE/WBEs)

CONTRACT RECIPIENT'S NAME		CONTRACT NO. OR SPECIFICATION NO.	
PROJECT DESCRIPTION		PROJECT LOCATION	
PRIME CONTRACTOR INFORMATION			
NAME AND ADDRESS (Include ZIP Code, Federal Employer Tax ID #)		<input type="radio"/> MBE <input type="radio"/> WBE	
PHONE		AMOUNT OF CONTRACT\$	
MBE/WBE INFORMATION			
<input type="radio"/> NONE*			
<input type="radio"/> MBE <input type="radio"/> WBE		NAME AND ADDRESS (Include ZIP Code,)	
<input type="radio"/> SUBCONTRACTOR <input type="radio"/> JOINT VENTURE	<input type="radio"/> SUPPLIER/SERVICE <input type="radio"/> BROKER		
AMOUNT OF CONTRACT \$		PHONE	
WORK TO BE PERFORMED			
<input type="radio"/> MBE <input type="radio"/> WBE		NAME AND ADDRESS (Include ZIP Code)	
<input type="radio"/> SUBCONTRACTOR <input type="radio"/> JOINT VENTURE	<input type="radio"/> SUPPLIER/SERVICE <input type="radio"/> BROKER		
AMOUNT OF CONTRACT \$		PHONE	
WORK TO BE PERFORMED			
<input type="radio"/> MBE <input type="radio"/> WBE		NAME AND ADDRESS (Include ZIP Code,)	
<input type="radio"/> SUBCONTRACTOR <input type="radio"/> JOINT VENTURE	<input type="radio"/> SUPPLIER/SERVICE <input type="radio"/> BROKER		
AMOUNT OF CONTRACT \$		PHONE	
WORK TO BE PERFORMED			
<input type="radio"/> MBE <input type="radio"/> WBE		NAME AND ADDRESS (Include ZIP Code)	
<input type="radio"/> SUBCONTRACTOR <input type="radio"/> JOINT VENTURE	<input type="radio"/> SUPPLIER/SERVICE <input type="radio"/> BROKER		
AMOUNT OF CONTRACT \$		PHONE	
WORK TO BE PERFORMED			
TOTAL MBE AMOUNT: \$ _____		TOTAL WBE AMOUNT: \$ _____	
SIGNATURE OF PERSON COMPLETING FORM: _____			
TITLE: _____ PHONE: _____ DATE: _____			

*Negative reports are required.

ORIGINAL SIGNATURE AND DATE REQUIRED

Failure to complete and submit this form with the bid will cause the bid to be rejected as non-responsive.

FORM 5

**SAMPLE SUMMARY OF BIDS RECEIVED FROM SUBCONTRACTORS
(MBE/WBE & NON-MBE/WBE)**

THIS SUMMARY IS PREPARED BY THE PRIME CONTRACTOR

Type of Job	Company Name	Selected	Bid Amount	MBE	WBE	NON
Asphalt	Gillerti & Sons	X	\$123,750	X		
	Americash		\$131,850			X
	Caltex		\$176,775			X
Bore & Jack	State Boring	X	\$208,870			X
	Jack Bore		\$208,870			X
	Alotta Boring		\$227,472	X		
Electrical	Square Fasteners, Inc		\$20,190	X		
	REM Sleep Co	X*	\$24,189		X	
	Tram Electric		\$30,120			X
Masonry	Welch, Inc.	X	\$20,383		X	
	Cheatum		\$36,000	X		
Striping	Orange Peel	X	\$8,597			X
	Crispy Boys Co.		\$9,370			X
	Sweat Co.		\$11,785	X		

*REM Sleep Co. selected over Square Fasteners, Inc. due to incomplete bid by Square Fasteners.

List type of jobs alphabetically, from low to high in each category and selected low bidder. All other types of bidders such as DBE, SWBE SMBE, and Non MBE/WBE should be shown in the "Non" column.

Form for information required to be submitted with the ATA package.

FORM 6

**MINORITY BUSINESS ENTERPRISE/WOMEN BUSINESS ENTERPRISE (MBE/WBE)
POSITIVE EFFORT CERTIFICATION BY APPLICANT/RECIPIENT**

1. The apparent successful low bidder on Clean Water Program funded project number C-06-_____ is _____
(name of bidder)
2. Before the State Water Resources Control Board - Division of Financial Assistance can consider requests for an Approval To Award (ATA) to any bidder the applicant/recipient must certify to the following:

MINORITY BUSINESS ENTERPRISE (MBE)

The bidder has obtained _____% of MBE participation for this contract.

WOMEN BUSINESS ENTERPRISE (WBE)

The bidder has obtained _____% of WBE participation for this contract.

Also submitted are Forms 3 and 4 which contain a complete list of those MBE and WBE firms subcontracted with or with whom other types of agreements were made. The list includes the names of the firm, address, phone number and dollar amount involved.

The following affirmative steps as required by 40 CFR 35.3150 (d) have been taken:

- (1) The contractor divided total requirements when economically feasible, into small tasks or quantities to permit maximum participation of minority and women's businesses.
- (2) The contractor established delivery schedules, where the requirements of the work permitted, which encouraged participation by minority and women's business.
- (3) The contractor included qualified minority and women's businesses on solicitation lists.
- (4) The contractor assures that minority and women's businesses were solicited, whenever they were potential sources.
- (5) The contractor used the services and assistance of the Small Business Administration and the Office of Minority Business Development Agency of the U.S. Department of Commerce.

It must be understood that the applicant/recipient in its role as a public trustee assumes primary responsibility to achieve an acceptable level of MBE/WBE utilization. This primary responsibility is a basic condition of the award of any State Revolving Fund financial assistance. Where an application/recipient fails to meet its obligations under these requirements the applicant/recipient may be declared nonresponsible and may have funding either annulled, suspended or terminated.

In accepting these responsibilities, I hereby certify to the above.

Name of Applicant/Recipient

Signature of Authorized Representative

Date

Name and Title of Authorized Representative

This form must be submitted with the ATA package.

Bob- section D below looks out of place???

11 - THE SUBLETTING AND SUBCONTRACTING FAIR PRACTICES ACT

Any person making a bid or offer to perform a contract shall, in his or her bid or offer, set forth the following:

1) The name and the location of the place of business of each subcontractor who will perform work or labor or render service to the prime contractor in or about the construction of the work or improvement, or a subcontractor licensed by the State of California who, under subcontract to the prime contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of 1 percent of the prime contractor's total bid or in the case of bids or offers for the construction of streets or highways, including bridges in excess of one-half or 1 percent of the prime contractor's total bid or ten thousand dollars (\$10,000), whichever is greater.

2) The portion of work that will be done by each subcontractor under this act. The prime contractor shall list only one subcontractor for each portion of work as is defined by the prime contractor in his or her bid or offer.

These requirements apply to the information required relating to subcontractors certified as minority or women business enterprises. For purposes of this requirement, "subcontractor" and "prime contractor" shall have the same meaning as those terms are defined in Section 4113 of the Public Contract Code.

12 - Executive Order 11246: 40 CFR 7.3 - EQUAL OPPORTUNITY CLAUSE (in relevant part)

'During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rule, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of Sept. 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided,

however, That in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

SEC. 203

(a) Each contractor having a contract containing the provisions prescribed in Section 202 shall file, and shall cause each of his subcontractors to file, Compliance Reports with the contracting agency or the Secretary of Labor as may be directed. Compliance Reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment policies, programs, and employment statistics of the contractor and each subcontractor, and shall be in such form, as the Secretary of Labor may prescribe.

(b) Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous contract subject to the provisions of this Order, or any preceding similar Executive order, and in that event to submit, on behalf of themselves and their proposed subcontractors, Compliance Reports prior to or as an initial part of their bid or negotiation of a contract.

(c) Whenever the contractor or subcontractor has a collective bargaining agreement or other contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, the Compliance Report shall include such information as to such labor union's or agency's practices and policies affecting compliance as the Secretary of Labor may prescribe: Provided, That to the extent such information is within the exclusive possession of a labor union or an agency referring workers or providing or supervising apprenticeship or training and such labor union or agency shall refuse to furnish such information to the contractor, the contractor shall so certify to the contracting agency as part of its Compliance Report and shall set forth what efforts he has made to obtain such information.

(d) The contracting agency or the Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, creed, or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this Order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the Order. In the event that the union, or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the contracting agency or the Secretary of Labor may require.

13 - 41 CFR 60-1.4 NONDISCRIMINATION CLAUSE

NONDISCRIMINATION CLAUSE

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) the contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

(b) Federally assisted construction contracts. (1) Except as otherwise provided, each administering agency shall require the inclusion of the following language as a condition of any grant, contract, loan, insurance, or guarantee involving federally assisted construction which is not exempt from the requirements of the equal opportunity clause:

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(c) Subcontracts. Each nonexempt prime contractor or subcontractor shall include the equal opportunity clause in each of its nonexempt subcontracts.

(d) Incorporation by reference. The equal opportunity clause may be incorporated by reference in all Government contracts and subcontracts, including Government bills of lading, transportation requests, contracts for deposit of Government funds, and contracts for issuing and paying U.S. savings bonds and notes, and such other contracts and subcontracts as the Deputy Assistant Secretary may designate.

(e) Incorporation by operation of the order. By operation of the order, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the order and the regulations in this part to include such a clause whether or not it is physically incorporated in such contracts and whether or not the contract between the agency and the contractor is written.

(f) Adaptation of language. Such necessary changes in language may be made in the equal opportunity clause as shall be appropriate to identify properly the parties and their undertakings. [43 FR 49240, Oct. 20, 1978, as amended at 62 FR 66971, Dec. 22, 1997]

1. During the performance of this contract, contractor and its subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of sex, race, religion, color, national origin, ancestry, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), marital status, age (over 40) or denial of family care leave. Contractors and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment. Contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Administrative Code, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12900 (a-f), set forth in Chapter 5 of Division 4 of Title 2 or the California Administrative Code are incorporated into this contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractor shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
2. The contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

THE UNDERSIGNED CERTIFIES THAT THE CONTRACTOR WILL COMPLY WITH THE ABOVE REQUIREMENTS.

CONTRACTOR OR
SUBCONTRACTOR NAME: _____

CERTIFIED BY:

NAME: _____ TITLE: _____

SIGNATURE: _____ DATE: _____

14 - 41 CFR 60-4.2

CONSTRUCTION CONTRACTORS--AFFIRMATIVE ACTION REQUIREMENTS (in relevant part)

Notice of requirement for Affirmative Action to ensure Equal Employment Opportunity (EEO) by Executive Order 11246, as amended by Executive Order 11375.

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Time- tables	Goals for minority participation for each trade	Goals for female participation for each trade
(Agency to insert start and end dates of contract)	(Insert goals from Minority Participation Table page BP-26)	6.9%

Contact the Division of Financial Assistance, Ken Gonzales at (916) 341-5683 for assistance with the minority goal and tables (gonzalesk@swrcb.ca.gov). The Office of Federal Contract Compliance Programs' web site for compliance issues and preaward registry is at <http://www.dol.gov/esa/welcome>.

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs (notify the applicable Regional Office found at www.dol.gov/esa) within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is (insert description of the geographical areas where the contract is to be performed giving the state, county and city, if any).

§ 60-4.3 Equal opportunity clauses (in relevant part)

Standard Federal Equal Employment Opportunity Construction Contract
Specifications (Executive Order 11246)

1. As used in these specifications:
 - a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
 - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
 - c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
 - d. "Minority" includes:
 - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.
5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

- a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
- b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
- c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.
- d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.
 - k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
 - l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
 - m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
 - n. Ensure that all facilities and company activities are Non-Segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
 - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

15 - ELIMINATION OF SEGREGATED FACILITIES
NOTICE TO PROSPECTIVE FEDERALLY-ASSISTED CONSTRUCTION CONTRACTORS

(a) A Certification of Non-Segregated Facilities, as required by the May 9, 1967 Order (32 F.R. 7439, May 19, 1967) on Elimination of Segregated Facilities, by the Secretary of Labor, must be submitted prior to the award of a Federally-assisted construction contract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity Clause.

(b) Contractors receiving Federally-assisted construction contract awards exceeding \$10,000 which, are not exempt from the provisions of the Equal Opportunity Clause, will be required to provide for the forwarding of the following notice to prospective subcontractors for supply and construction contracts where the subcontracts exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity Clause.

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT
FOR CERTIFICATION OF NON-SEGREGATED FACILITIES

(a) A Certification of Non-Segregated Facilities, as required by the May 9, 1967 Order (32 F.R. 7439, May 19, 1967) on Elimination of Segregated Facilities, by the Secretary of Labor, must be submitted prior to the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity Clause.

(b) Contractors receiving subcontract awards exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause will be required to provide for the forwarding of this notice to prospective subcontractors for supply and construction contracts where the subcontracts exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity Clause.

16 - CERTIFICATION OF NON-SEGREGATED FACILITIES

Environmental Protection Agency Region IX
75 Hawthorne Street
San Francisco, California 94105

CERTIFICATION OF NON-SEGREGATED FACILITIES

(Applicable to federally assisted construction contracts and related subcontracts exceeding \$10,000 which are not exempt from the Equal Opportunity Clause.)

The federally assisted construction contractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The federally assisted construction contractor certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The federally assisted construction contractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. The federally assisted construction contractor agrees that (except where he has obtained identical certifications from proposed subcontractors for specified time period) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that he will retain such certifications in his files.

Signature

Date

Name and Title of Signer (Please Type)

Note: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

17 - DRUG-FREE WORKPLACE CERTIFICATION

DRUG-FREE WORKPLACE CERTIFICATION

CONTRACTOR/APPLICANT:

The contractor or applicant named above hereby certifies compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace. The above named contractor or applicant will:

1. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
2. Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b), to inform employees about all of the following:
 - (a) The dangers of drug abuse in the workplace,
 - (b) The person's or organization's policy of maintaining a drug-free workplace,
 - (c) Any available counseling, rehabilitation and employee assistance programs, and
 - (d) Penalties that may be imposed upon employees for drug abuse violations.
3. Provide as required by Government Code Section 8355(c), that every employee who works on the proposed contract or loan:
 - (a) Will receive a copy of the company's drug-free policy statement, and
 - (b) Will agree to abide by the terms of the company's statement as a condition of employment on the contract or loan.

CERTIFICATION

I, the official named below, hereby swear that I am duly authorized legally to bind the contractor or loan recipient to the above described certification. I am fully aware that this certification, executed on the date and in the county below, is made under penalty of perjury under the laws of the State of California.

OFFICIAL'S NAME:

DATE EXECUTED:

EXECUTED IN COUNTY OF:

CONTRACTOR/APPLICANT SIGNATURE:

TITLE:

18 - PART 32--GOVERNMENT WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND
GOVERNMENT WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

Appendix A to Part 32--Certification Regarding Debarment, Suspension, and Other Responsibility Matters--Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this

transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

**Certification Regarding Debarment, Suspension, and Other Responsibility
Matters--Primary Covered Transactions**

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;
- (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**Appendix B to Part 32--Certification Regarding Debarment, Suspension, Ineligibility and Voluntary
Exclusion--Lower Tier Covered Transactions**

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary
Exclusion--Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

19 - **RESPONSIBILITY FOR REMOVAL, RELOCATION, OR PROTECTION OF EXISTING
UTILITIES; CONTRACTS AND PROVISIONS**
GOVERNMENT CODE SECTION 4215 (in relevant part)

In any contract to which a public agency as defined in Section 4401 is a party, the public agency shall assume the responsibility, between the parties to the contract, for the timely removal, relocation, or protection of existing main or trunkline utility facilities located on the site of any construction project that is a subject of the contract, if such utilities are not identified by the public agency in the plans and specifications made a part of the invitation for bids. The contract documents shall include provisions to compensate the contractor for the costs of locating, repairing damage not due to the failure of the contractor to exercise reasonable care, and removing or relocating such utility facilities not indicated in the plans and specifications with reasonable accuracy, and for equipment on the project necessarily idled during such work. The contract documents shall include provisions that the contractor shall not be assessed liquidated damages for delay in completion of the project, when such delay was caused by the failure of the public agency or the owner of the utility to provide for removal or relocation of such utility facilities.

20 - **SUBMITTING OF BIDS AND AGREEING TO ASSIGN**
GOVERNMENT CODE SECTION 4552 (in relevant part)

In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S. C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. (1978)

21 - NON-COLLUSION AFFIDAVIT
PUBLIC CONTRACT CODE SECTION 7106

NON-COLLUSION AFFIDAVIT

TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID

State of California

County of _____ ss

_____; being first duly sworn, deposes and says that he or she is

_____ of _____
the party making the foregoing bid, that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

By _____

personally known to me OR proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or entity upon behalf of which the person(s) acted, executed the instrument.

Subscribed and sworn to before me on _____

(Notary Public)

Minority Participation Goals for California

Affirmative Action/Equal Employment Opportunity for Construction Contractors Aggregate Work Force
Standard Metropolitan Statistical Area (SMSA)
41 CFR §60 - 4.6

All areas/all trades **Female** participation goal **6.9%**

Area	minority participation	Goal (%)	Area	minority participation	Goal (%)
174	Redding:		179	Fresno-Bakersfield:	
Non-SMSA		6.8	SMSA Counties:		
	Lassen; Modoc; Plumas; Shasta; Siskiyou; Tehema		0680	Bakersfield	19.1
				Kern	
			2840	Fresno	26.1
				Fresno	
175	Eureka:		Non-SMSA Counties		23.6
Non-SMSA Counties		6.6		Kings; Madera; Tulare	
	Del Norte; Humboldt; Trinity				
176	San Francisco-Oakland-San Jose:		180	Los Angeles:	
SMSA Counties:			SMSA Counties:		
7120	Salinas-Seaside-Monterey	28.9	0360	Anaheim-Santa Ana-Garden Grove	11.9
	Monterey			Orange	
7360	San Francisco-Oakland	26.6	4480	Los Angeles-Long Beach	26.3
	Alameda; Contra Costa; Marin; San Francisco; San Mateo			Los Angeles	
7400	San Jose	19.6	6000	Oxnard-Simi Valley-Ventura	21.5
	Santa Clara			Ventura.	
7485	Santa Cruz	14.9	6780	Riverside-San Bernardino-Ontario	19.0
	Santa Cruz			Riverside; San Bernardino.	
7500	Santa Rosa	9.1	7480	Santa Barbara-Santa Maria-Lompoc	19.7
	Sonoma.			Santa Barbara	
8720	Vallejo-Farfield-Napa	17.1	Non-SMSA Counties		24.6
	Napa; Solano			Inyo; Mono; San Luis Obispo	
Non-SMSA Counties		23.2	181	San Diego:	
	Lake; Mendocino; San Benito		SMSA Counties:		
177	Sacramento:		7320	San Diego	16.9
SMSA Counties:				San Diego	
6920	Sacramento	16.1	Non-SMSA Counties		16.2
	Placer; Sacramento; Yolo			Imperial	
Non-SMSA Counties		14.3			
	Butte; Colusa; El Dorado; Glenn; Nevada; Sierra; Sutter; Yuba				
178	Stockton-Modesto:				
SMSA Counties:					
5170	Modesto	12.3			
	Stanislaus				
8120	Stockton	24.3			
	San Joaquin				
Non-SMSA Counties		19.8			
	Alpine; Amador; Calaveras; Mariposa; Merced; Tuolumne				

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